IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 20-03-2007

Coram:

THE HONOURABLE MR.JUSTICE R. BALASUBRAMANIAN

AND

THE HONOURABLE MRS. JUSTICE PRABHA SRIDEVAN

A.S.NOS. 823 to 842 of 2003 , 861 to 880 of 2003 ,

889 to 906 of 2003 , 911 to 927 of 2003

and 947 to 966 of 2003

A.S.No.823 of 2003

The Land Acquisition Officer and
The Special Thasildar(LA), Salem-Karur
Broad Gauge Railway Line Project,
Namakkal. ...Appellant in Appeal Nos.823, to 842 of 2003 , 861 to 880 , 889 to 906, 911 to 927 of 2003 and 947 to 966 of 2003

-Vs.-

Palaniappan .. Ist respondent in Appeal No. 823/03
Satheesh Kumar .. Ist respondent in Appeal No. 824/03
Muthusamy .. Ist respondent in Appeal No. 825/03
Seeranga Gounder .. Ist respondent in Appeal No. 826/03
C. Marimuthu .. Ist respondent in Appeal No. 827/03
K. Ganesan .. Ist respondent in Appeal No. 828/03
Lalitha .. Ist respondent in Appeal No. 829/03
Meenambaal .. Ist respondent in Appeal No. 830/03
V. Sathasivam .. Ist respondent in Appeal No. 831/03
Jayanthi .. Ist respondent in Appeal No. 832/03
Thangammal .. Ist respondent in Appeal No. 833/03
Chinnappan
Angammal ..Respondents 1 and 2 in Appeal No.834/03
V. Ramasamy .. Ist respondent in Appeal No. 835/03

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S. Indirani .. Ist respondent in Appeal No. 836/03
Ramayee .. Ist respondent in Appeal No. 837/03
P. Thangamani .. Ist respondent in Appeal No. 838/03
Pappathi .. Ist respondent in Appeal No. 839/03
Pushparani .. Ist respondent in Appeal No. 840/03
Thangammal .. Ist respondent in Appeal No. 841/03
Seeranga Gounder .. Ist respondent in Appeal No. 842/03
Balan .. Ist respondent in Appeal No. 861/03
Namachivayam .. Ist respondent in Appeal No. 862/03
Sumathi .. Ist respondent in Appeal No. 863/03
R. Vengatachalam .. Ist respondent in Appeal No. 864/03
V. Kannan .. Ist respondent in Appeal No. 865/03
Rukmani Ammal .. Ist respondent in Appeal No. 866/03
Surumbayee .. Ist respondent in Appeal No. 867/03
P. Latha Mani .. Ist respondent in Appeal No. 868/03
Periyasamy .. Ist respondent in Appeal No. 869/03
Nachiyammal .. Ist respondent in Appeal No. 870/03
J.S. Kandasamy .. Ist respondent in Appeal No. 871/03
J.S. Jangamachetty .. Ist respondent in Appeal No. 872/03
Andalammal .. Ist respondent in Appeal No. 873/03
Ramalingam .. Ist respondent in Appeal No. 874/03
Amaravathi .. Ist respondent in Appeal No. 875/03
Selladurai
Kanagaraj .. Respondents 1 and 2 in Appeal No. 876/03
Sayeensa .. Ist respondent in Appeal No. 877/03
P. Vijaya
Ramasamy
Muthumalli
Visvanathan
Venugopal ..Respondents 1 to 5 in Appeal No. 878/03
Kumarasamy .. Ist respondent in Appeal No. 879/03

K. B. Basker
by power agent
Kandasamy .. Ist respondent in Appeal No. 880/03

Balammal .. Ist respondent in Appeal No. 889/03
Shajahan .. Ist respondent in Appeal No. 890/03
G. Veerammal .. Ist respondent in Appeal No. 891/03
Thangavel
Johni Thangadurai .. Respondents 1 and 2 in Appeal No. 892/03
Karthikeyan .. Ist respondent in Appeal No. 893/03
K. Kumar .. Ist respondent in Appeal No. 894/03
Janagiammal .. Ist respondent in Appeal No. 895/03
Poongothai . . Ist respondent in Appeal No. 896/03
K. Rangasamy .. Ist respondent in Appeal No. 897/03
D. Chandra .. Ist respondent in Appeal No. 898/03
A. Sarasvathi .. Ist respondent in Appeal No. 899/03
Rasitha Begam .. Ist respondent in Appeal No. 900/03

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Thirumalai Ammal .. Ist respondent in Appeal No. 901/03
Nalini .. Ist respondent in Appeal No. 902/03

Mallayammal,
W/o. Krishnan Chettiar
Mallayammal
W/o. Venkatachettiyar .. Respondents 1 and 2 in Appeal No. 903/03

Nagalakshmi .. Ist Respondent in Appeal No. 904/03
R. Devaki .. Ist Respondent in Appeal No. 905/03

R. Balakrishnan
C. Muthukrishnan .. Respondents 1 and 2 in Appeal No. 906/03

P. Sellandi
P. Nachan .. Respondents 1 and 2 in Appeal No. 911/03

S. Selvakumar .. Ist Respondent in Appeal No. 912/03

Natarajan .. Ist Respondent in Appeal No. 913/03
Rajamanickam .. Ist Respondent in Appeal No. 914/03
Yasodai Ammal .. Ist Respondent in Appeal No. 915/03
Amirtham .. Ist Respondent in Appeal No. 916/03
M. Mallichetty .. Ist Respondent in Appeal No. 917/03
Allimuthu .. Ist Respondent in Appeal No. 918/03
Rukmani Ammal .. Ist Respondent in Appeal No. 919/03
Venkattammal .. Ist Respondent in Appeal No. 920/03
N. Yashoda .. Ist Respondent in Appeal No. 921/03
Janagiammal .. Ist Respondent in Appeal No. 922/03
Veerasamy .. Ist Respondent in Appeal No. 923/03
Singari .. Ist Respondent in Appeal No. 924/03
Subramani .. Ist Respondent in Appeal No. 925/03
S. Pappathi .. Ist Respondent in Appeal No. 926/03
Saroja .. Ist Respondent in Appeal No. 927/03
P. Elango .. Ist Respondent in Appeal No. 947/03
Pappathy .. Ist Respondent in Appeal No. 948/03
A. Selvam .. Ist Respondent in Appeal No. 949/03
R. Muthusamy .. Ist Respondent in Appeal No. 950/03
S. Ponnampalam .. Ist Respondent in Appeal No. 951/03
A. Rani .. Ist Respondent in Appeal No. 952/03
M.S. Balasubramanian .. Ist Respondent in Appeal No. 953/03
P. Sundaram
Santhi .. Respondents 1 and 2 in Appeal No. 954/03

Pavayee .. Ist Respondent in Appeal No. 955/03
Sellammal .. Ist Respondent in Appeal No. 956/03
Nagalakshmi .. Ist Respondent in Appeal No. 957/03
V. Kaliyappan .. Ist Respondent in Appeal No. 958/03
M. Arumugam .. Ist Respondent in Appeal No. 959/03

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Arukkani Ammal .. Ist Respondent in Appeal No. 960/03
Madeswaran .. Ist Respondent in Appeal No. 961/03
Navabjohn .. Ist Respondent in Appeal No. 962/03
N. Subramanian .. Ist Respondent in Appeal No. 963/03

Thangaraj .. Ist Respondent in Appeal No. 964/03

Muthukumar
Periasamy .. Respondents 1 and 2 in Appeal No. 965/03

M. Subramanian .. Ist Respondent in Appeal No. 966/03

The Deputy Chief Engineer(Constructions)
Salem-Karur Broad Gauge
Railway Line Project, Southern Railway,
Salem- 636 005. ...2nd Respondents in Appeal Nos.823 to 833, 835 to 842, 861 to 875, 877, 879, 880, 889 to 891, 893 to 902 to 905, 912 to 927, 947 to 953, 955 to 964 and 966 of 2003.
3rd Respondent in Appeal No.834, 876, 892, 903, 906, 911, 954, 965 of 2003
6th Respondent in appeal No.878 of 2003

Appeal against the decree of the Court of the Subordinate Judge, Namakkal dated 17.4.2002 in
L.A.O.P.No.370/2002 (in A.S.No.823/03)
L.A.O.P.No.372/2002 (in A.S.No.824/03)
L.A.O.P.No.373/2002 (in A.S.No.825/03)
L.A.O.P.No.374/2002 (in A.S.No.826/03)
L.A.O.P.No.375/2002 (in A.S.No.827/03)
L.A.O.P.No.376/2002 (in A.S.No.828/03)
L.A.O.P.No.377/2002 (in A.S.No.829/03)
L.A.O.P.No.378/2002 (in A.S.No.830/03)
L.A.O.P.No.379/2002 (in A.S.No.831/03)
L.A.O.P.No.381/2002 (in A.S.No.832/03)
L.A.O.P.No.382/2002 (in A.S.No.833/03)
L.A.O.P.No.383/2002 (in A.S.No.834/03)
L.A.O.P.No.385/2002 (in A.S.No.835/03)
L.A.O.P.No.387/2002 (in A.S.No.836/03)
L.A.O.P.No.388/2002 (in A.S.No.837/03)
L.A.O.P.No.389/2002 (in A.S.No.838/03)
L.A.O.P.No.391/2002 (in A.S.No.839/03)
L.A.O.P.No.426/2002 (in A.S.No.840/03)

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L.A.O.P.No.449/2002 (in A.S.No.861/03)
L.A.O.P.No.463/2002 (in A.S.No.862/03)
L.A.O.P.No.453/2002 (in A.S.No.863/03)
L.A.O.P.No.436/2002 (in A.S.No.864/03)
L.A.O.P.No.432/2002 (in A.S.No.865/03)
L.A.O.P.No.431/2002 (in A.S.No.866/03)
L.A.O.P.No.452/2002 (in A.S.No.867/03)
L.A.O.P.No.451/2002 (in A.S.No.868/03)
L.A.O.P.No.450/2002 (in A.S.No.869/03)
L.A.O.P.No.448/2002 (in A.S.No.870/03)
L.A.O.P.No.447/2002 (in A.S.No.871/03)
L.A.O.P.No.446/2002 (in A.S.No.872/03)
L.A.O.P.No.445/2002 (in A.S.No.873/03)
L.A.O.P.No.433/2002 (in A.S.No.874/03)
L.A.O.P.No.443/2002 (in A.S.No.875/03)
L.A.O.P.No.442/2002 (in A.S.No.876/03)
L.A.O.P.No.441/2002 (in A.S.No.877/03)
L.A.O.P.No.440/2002 (in A.S.No.878/03)
L.A.O.P.No.439/2002 (in A.S.No.879/03)
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L.A.O.P.No.466/2002 (in A.S.No.891/03)
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L.A.O.P.No.430/2002 (in A.S.No.901/03)
L.A.O.P.No.456/2002 (in A.S.No.902/03)
L.A.O.P.No.428/2002 (in A.S.No.903/03)
L.A.O.P.No.434/2002 (in A.S.No.904/03)
L.A.O.P.No.457/2002 (in A.S.No.905/03)
L.A.O.P.No.435/2002 (in A.S.No.906/03)
L.A.O.P.No.405/2002 (in A.S.No.911/03)
L.A.O.P.No.410/2002 (in A.S.No.912/03)
L.A.O.P.No.411/2002 (in A.S.No.913/03)
L.A.O.P.No.412/2002 (in A.S.No.914/03)
L.A.O.P.No.413/2002 (in A.S.No.915/03)
L.A.O.P.No.414/2002 (in A.S.No.916/03)
L.A.O.P.No.415/2002 (in A.S.No.917/03)
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L.A.O.P.No.417/2002 (in A.S.No.919/03)

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L.A.O.P.No.420/2002 (in A.S.No.922/03)
L.A.O.P.No.421/2002 (in A.S.No.923/03)
L.A.O.P.No.422/2002 (in A.S.No.924/03)
L.A.O.P.No.423/2002 (in A.S.No.925/03)
L.A.O.P.No.424/2002 (in A.S.No.926/03)
L.A.O.P.No.425/2002 (in A.S.No.927/03)
L.A.O.P.No.400/2002 (in A.S.No.947/03)
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L.A.O.P.No.380/2002 (in A.S.No.949/03)
L.A.O.P.No.401/2002 (in A.S.No.950/03)
L.A.O.P.No.409/2002 (in A.S.No.951/03)
L.A.O.P.No.398/2002 (in A.S.No.952/03)
L.A.O.P.No.399/2002 (in A.S.No.953/03)
L.A.O.P.No.406/2002 (in A.S.No.954/03)
L.A.O.P.No.397/2002 (in A.S.No.955/03)
L.A.O.P.No.396/2002 (in A.S.No.956/03)
L.A.O.P.No.395/2002 (in A.S.No.957/03)
L.A.O.P.No.408/2002 (in A.S.No.958/03)
L.A.O.P.No.407/2002 (in A.S.No.959/03)
L.A.O.P.No.404/2002 (in A.S.No.960/03)
L.A.O.P.No.402/2002 (in A.S.No.961/03)
L.A.O.P.No.390/2002 (in A.S.No.962/03)
L.A.O.P.No.394/2002 (in A.S.No.963/03)
L.A.O.P.No.393/2002 (in A.S.No.964/03)
L.A.O.P.No.392/2002 (in A.S.No.965/03)
L.A.O.P.No.386/2002 (in A.S.No.966/03)

For appellant : Mr. V. Ravi, Special Govt. Pleader

For Respondents : Mr.R.Krishnamurthy, Senior Counsel
for Mr.R.Saseetharan
& Mr. R. Bharanidharan for Ist respondent
(land owners) inA.S.838,951, 960,961,
952, 861, 901, 914, 916, 823, 950,
913, 912, 893, 889, 870, 917, 957, 824 &
839 of 2003 and for Respondents 1 & 2 in
As.No.834/03

Mr. M. Murali for Mr.K.V. Sundarajan,
Advocate for
the Ist Respondent in A.S.No.823/03
Mr. N. Thiagaraj in A.S.No.915, 919, 920,
921, 866, 874, 904, 864/03
and for Respondents 1 and 2 in A.S.Nos.903,

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906 &876/03 and for Respondents 1 to 5 in A.S.No.878/03
Mr.R.Thyagarajan
for Mr.V.G. Suresh Kumar
for 2nd respondent/Railways (in all appeals)

JUDGMENT

(Prabha Sridevan, J.)

Acquisition proceedings initiated for laying a broad gauge railway line-Salem-Karur Project. The acquired lands are situated in two villages Namakkal and Kosavampatti. In the appeals filed against the compensation awarded in the L.A.O.Ps., this Court on 06-10-2005 held that the determination of the market value had been made on the basis of sale deeds which were not relevant and which do not reflect the correct value and therefore, without directing a de novo trial and findings were called for from the Court below. The parties were allowed to let in evidence on the market value of the lands acquired.

2. The learned Subordinate Judge, Namakkal has submitted his findings. For the purpose of arriving at the value of the lands he has divided the lands in Kosavampatti Village into three parts and the lands in the Namakkal Village also into three parts. From the sale deeds produced by the claimants, the learned Sub-Judge chose those documens which he found were acceptable and fixed the market value. He applied 10% or 15% appreciation; Deduction was also given for developmental charges. For reasons given in the finding some lands were exempt from the deduction. The various pronouncements of the Supreme Court and this Court have also been relied on by the learned trial Judge for arriving at his finding.

3. The learned Senior Counsel, Mr. R. Thiagarajan, for the Railways and the learned Senior Counsel Mr. R. Krishnamurthy for the claimants made their submissions. Both were aggrieved by the findings of the learned Subordinate Judge. Broadly, the objections of both sides were with regard to (a) the percentage of appreciation given for each year for arriving at the value, (b) the percentage fixed for developmental charges and (c) the choice of the sale deed taken to fix the value. The learned Subordinate Judge had in some cases taken 15% as the appreciation for each year whereas according to Mr. R. Thiagarajan, learned Senior Counsel, 10% appreciation ought alone was correct. The learned Senior Counsel also submitted that the manner in which the appreciation should be calculated. AIR 2002 SC 1558(Special Land Acquisition Officer ,BYDA, Bagalkot Vs. Mohd. Hanif Sahib Bawa Sahib was referred to. It is extracted:

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"The appreciation of value of land at 10% on the base price of Rs.3/- per sq.ft. would increas the value of the land @0.30 paise per year. 0.30 paise multiplied by 7 would come to Rs.2.10 paise. If the appreciation in value of the land for the next seven years is taken at Rs.2.10paise and added to the base value of Rs.3/-, the market value of the land under acquisition in year 1985 would come to Rs.5.10 paise."

4. As regards depreciation, the Sub-Court had adopted different rates for different lands. As regards the developmental charges, 50% was deducted in some cases, 25% in others and in some cases 30%. The learned Senior Counsel for the Railways submitted that nothing less than 1/3rd deduction should be given.

5. Some decisions were cited with regard to the deduction for developmental charges. In K. Vasundara Devi Vs. Revenue Divisional Officer (LAO) (1997 (5) SCC 426, 40% deduction by the High Court was upheld by the Supreme Court since the sale deeds were of small pieces of land and the market value of large tracts of land had to be arrived at. In Basavva Vs. Spl. Land Acquisition Officer (1996 (9) SCC 640), the sale deeds of small part of land were taken as basis for arriving at the market value and the Supreme Court upheld that the deduction between 33 1/3 and 53% was valid. In Basant Kumar Vs. Union of India (1996 11 SCC 542) it was held that atleast one third of the compensation should be deducted towards providing amenities, like roads, parks, electricity, sewage, water facilities etc. In Shimla Development Authority Vs. Santosh Sharma (1997 (2) SCC 637) 40% deduction towards development charges was held proper. In V. Hanumantha Reddy Vs. Land Acquisition Officer and Mandal R. Officer (AIR 2004 SC 1185) the Supreme Court held as follows:

"The acquired land may be having high potential value but that itself per se cannot be claimed to be a developed land. Lots of developmental activities are to be undertaken like laying of roads, sewerage facility, water supply etc., so that the land would be made fit for construction of houses for the needy people, which would require enormous amount of expenditure. Therefore, determination of market value of the acquired land on the basis of sale instances in which land was sold at the rate of Rs.45/- per square yard, and after making 1/3rd deduction on account of laying out of roads and for other developmental purposes was proper. "

6. The learned Senior Counsel for the claimants submitted that 30% deduction is not warranted in a case where the public purpose is for laying a railway track. Therefore, anything above 15% would be an excess.

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7. The learned Senior counsel for the claimants submitted that while there is no doubt that it was only the claimants' sale deeds which were the basis for fixing the market value, the Subordinate Judge had arbitrarily rejected those sale deeds which were to the advantage of the claimants and in some cases, even accepted the value reflected in documents where Section 47(A) of the Stamp Act proceedings were on. The learned Senior Counsel also submitted that in some instances the Court below had failed to look at the sale deeds relating to properties which were close to the acquired lands.

8. We have considered the submissions and the various decisions cited and also the detailed findings of the learned Single Judge. We are of the opinion that there can be no blind application of any decision, whether it is the rate of developmental charges or the rate of appreciation as it will have to depend on the facts of the case.

9. In Land Acquisition Officer and Revenue Divisional Officer Vs. Ramanjulu (2005 (9) SCC 594), it is held as follows:

> "B.Land Acquisition Act, 1894 - S.23 - Compensation - Deduction from, towards developmental charges - Held, ordinarily one-third deduction would be allowed but considering the fact that the lands were acquired for expansion of industrial estate, that too for the third phase and were levelled lands adjoining the developed lands of the first and second phases of the industrial estate, 15% deduction towards development charges to be made."

10. In The Land Acquisition Officer/Sub Collector, Tindivanam Vs. Kuppuswami Naidu (1997 (5) CTC 539), the Division Bench of this Court held,

> "... Courts have held that at least 1/3rd of the market value of the land acquired is to be deducted towards development charges. But, when the land is required for the establishment of a bus stand, these requirements are not needed except to level the land. In the instant case, it is found, that the lands are even lands and therefore, no additional expenditure is needed for levelling the lands. Therefore, we do not find any merit in this contention."

11. It was contended on behalf of the Railways that while deducting for developmental charges the Courts should not take into account the purpose for which land is acquired, but, how much the owner would have lost if he had to develop his land as house-site and that is why a deduction of one third should be made which will take within its ambit the lands lost in laying down roads, access etc., and the fact that here the public purpose is for laying railway track

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should not be a factor to reduce the percentage of deduction towards developmental charges.

12. On the other hand, the learned Senior Counsel for the claimants would submit that the Railways would have not lost any land towards development because the land is used to lay the railway track and except for one point where it will be utilised to provide the access for the railway station and construction of the railway station, virtually, the entire land recovered for the purpose would have been utilised by the Railways.

13. In the present case, the acquisition is for laying a railway track. The acquisition of land in Part (ii) Kosavampatti and Part (iii) Namakkal town is a very narrow strip of land and even with regard to Part (i) and (ii) of Namakkal and Part (iii) of Kosavampatti, the acquisition is though broader in width compared to the lands referred to above is narrow. There is evidence on record that in and around the acquired lands there have been developmental activities and it would have been possible for the owners of the land to sell these properties as house-sites.

14. The learned Subordinate Judge had adopted different percentages for deduction towards developmental charges. As stated earlier there is evidence to show that all around the acquired lands there had been developmental activities. So, even if the land owners had sold their lands as house sites they would not have lost much towards developmental charges and looked at from the view of the Railways, the Railways would hardly have had to incur any expenditure for developmental charges. All that they would have had to do is to raise the land level for laying the railway track. So looked at from either point of view 15% deducted towards developmental charges appears just and reasonable. The decision reported in AIR 2002 SC 1558(cited supra) appears appropriate.

15. Broadly, in these appeals what we have tried to do is to arrive at a value which would not be totally unacceptable to either side. The claimants have waited for many years for their compensation and by prolonged delay the Railways is also put to loss because of the interest they have to pay for every added year. Viewed from this perspective, we have fixed 15% deduction towards developmental charges uniformly for every segment, Parts (i), (ii) & (iii), both in Namakkal and in Kosavampatti.

16. The learned Subordinate Judge has exempted in each segment or each part, certain lands from deduction. He has given some reasons as to why he has fixed a particular extent of land in each PART for making no deduction towards developmental charges. These reasons do not seem to be arbitrary or unreasonable and therefore, as

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regards the lands exempted from deduction towards developmental charges, we confirm the findings of the learned Subordinate Judge.

17. As regards appreciation for each year, we accept the judgement in AIR 2002 SC 1558(cited supra) and the manner in which the appreciation is calculated i.e., 10% for each year multiplied by the number of years from the date of sale deed to the date of Section 4(1) Notification. The value is not compounded every year in the manner the claimants pleaded that should be done.

Now we will examine the compensation awarded for each part.

A. Part(i) Namakkal : The claimants filed Exs-A1, A3, A4, A42 to A49. The learned Subordinate Judge accepted only Ex-A41. According to the claimants, the Sub-ordinate Court ought to have considered Exs-A46, A47 and A48. Ex-A41 relates to T.S.No.31/4. The date of the document is 18-08-1997 and the value as per the sale deed is Rs.43/- per sq. ft. The date of Section 4(1) Notification is 01-06-1999. The documents relied on by the Railways are Exs-B9, B10 and B11. The Court took into account only Ex-A41. Ex-A41 was a transaction, which is subject matter of Section 47(A) of the Stamp Act proceedings. The Sub-Court, referred to the judgement of the Supreme Court in Jawajee Nagnatham Vs. Revenue Divisional Officer, Adilabad, A.P. (1994(4) SCC 595) wherein it was held that the value fixed for the purpose of collecting stamp duty cannot form the foundation to determine the market value. Yet, the market value was fixed on the basis of Ex-A41 alone. It is seen from the finding that the lands covered by Exs-A41, A46 to A49 are situated in Block III in which the acquired lands are also situated, though, of course, Ex-A41 is in respect of the same survey number. In these circumstances, we think that it would be more appropriate to fix Ex-A46 as the correct value since the value in Ex-A41 is the guideline value. As per Ex-A46, the value is Rs.65/- per square feet. The transaction is of the year 1999 and therefore, no appreciation is warranted. There will be a deduction of 15% in respect of the lands above 1750 square feet uniformly and in respect of those claimants, whose lands are below 1750 square feet, there will be no deduction.

B. Part (ii) Namakkal :

The claimants had filed Exs-A2 and A33 to A40. The documents Exs-A33 and A-34 alone were considered by the Sub-court and the others were rejected. The learned Senior Counsel appearing for the claimants submitted that Ex-A40 was wrongly rejected on the ground that it pertains to Survey No.38/10 and that, it actually pertains to Survey No.30/10, which is very close to the acquired land. It was also submitted that the Court below ought not to have taken into account Ex-A34, which was about 7 years prior to the notification. The learned Senior Counsel also submitted that the value of the lands situated in Namakkal must be fixed keeping in mind that Namakkal Town was conferred with the status of District Headquarters on the

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formation of the Namakkal District in the year 1996, just 3 years before the notification under Section 4(1) of the Land Acquisition Act. Keeping this in mind, we are of the opinion that an average value of the lands as reflected in Exs-A33 and A40 would be reasonable. Ex-A33 is dated 5.5.1995. Survey No.13 is about the same distance from the acquired lands on the northern side of Part(ii) as T.S.No.30/10 is from the acquired lands on the southern side of Part (ii). Ex-A40 is dated 6.1.1997. Applying 10% appreciation to the value, the value of Ex-A33 lands would be Rs.42/- per square feet and the value of Ex-A40 lands would be Rs.62/- per square feet. The average would be about Rs.52/- per square feet. Keeping in mind, the fact that Namakkal, had just around that time been granted the status of District Headquarters, we round off the value to Rs.55/- per square feet. The value fixed by the Sub-Court is Rs.50/- per square feet. According to the claimants, the value should be Rs.70/- per square feet. We think Rs.55/- per square feet inclusive of 10% appreciation would be a reasonable value for the lands. To this, 15% depreciation is applied in respect of those claimants whose acquired lands exceed 5565 square feet and there will be no deductions in respect of the claimants whose lands were less than 5565 square feet in extent.

C. Part(iii) Namakkal:

The claimants filed Exs-A5 to A9 and A-27 to A-32. The Sub-Court considered Exs-A9, A27, A29 and A31 and discarded the rest. The value fixed by the Sub-Court taking the average from the above 4 documents was Rs.113/- per square feet. There does not seem to be any reason for rejecting Exs-A30, A18 and A5, which, as seen from the map, are close to the acquired lands. There does not seem to be any reason for rejecting the value, which is more favourable to the claimants. In fact, in 1969 1 MLJ 45(Sri Rani M. Vijayalakshmamma Rao Bahadur, Ranee of Vuyyur Vs. Collector of Madras) the Supreme Court had observed that it is only fair that the sale deeds which represents the higher value should be preferred. Ex-A6 is with respect to the lands in the same Town Survey number as the acquired lands, though not the same division. Therefore, we think the appropriate course would be to take the average of all the sale deeds marked by the claimants, apply 10% appreciation and arrive at the average. If we do this, the value per square feet comes to Rs.164 per square feet. The learned Subordinate Judge made no deductions in respect of the claimants whose lands were less than 3000 square feet in extent. As regards the rest of the claimants, there will be a deduction of 15% uniformly.

A. Part(i) Kosavampatti :

The documents filed by the claimants are Exs-A1 to A5 and Exs-A19 to A25. The learned Subordinate Judge has taken into account Exs-A5,

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A20, A22 and discarded the rest. Ex-A5 was accepted because it is within the acquired area. But, Exs-A3 and A4 are also in respect of the lands within the acquired area. The learned Subordinate Judge has raised a doubt as to whether the value shown in Ex-A3 and A-4 are inflated. There is no evidence to conclude that the value is inflated. We have already seen that on account of Namakkal being elevated to the status of District Headquarters, the increase in the value of the property would not be unnatural. In the absence of any evidence to show that the value in Ex-A4 was a deliberately inflated value, we see no reason why that should be rejected merely on the basis of suspicion. According to both Exs-A3 and A-4, which are a year apart, the value is Rs.70/- per square feet. Ex-A4 was executed in 1999 which is the year of the Section 4(1) notification. Therefore, we accept that value and no appreciation is given since it is of the same year. Rs.70 per square feet is taken as the value. To this, 15% deduction is given for developmental charges as regards those claimants, where the lands are of an extent less than 1500 square feet. In respect of all other claimants where the extent is 1500 and above, a uniform deduction of 15% shall be made.

B. Part(ii) Kosavampatti :

The documents relied on are Exs-A25, A26, A28, A31 and A32; The learned Subordinate Judge has accepted Exs-A26 and A31 and discarded Exs-A20, A28, A32. The value fixed by the Sub-Court is Rs.64/- by arriving at the average from Exs-A26 and A31 and adopting 10% appreciation. Both sides have no serious objection to this value. The learned Subordinate Judge has applied a deduction of 25% for lands covered under L.A.O.P.Nos.436 & 437 of 2002. Instead of 25%, the deduction shall be 15% uniformly in respect of those lands alone.

C. Part(iii) Kosavampatti:

The documents filed by the claimants are Exs-A27, A29, A30 and B-14. The documents considered by the Court are Exs-A29 and B-14. The rest are discarded. The learned Subordinate Judge has fixed the value at Rs.40/- per square feet taking the average of Exs-A29 and B14 and adopting 10% appreciation. There is no dispute with regard to this value and therefore, it is accepted. The learned Subordinate Judge deducted 25% for developmental charges for all the lands acquired. This is reduced to 15% deduction uniformly.

18. The Sub-court has taken those sale deeds which are relevant on the basis of 2003 4 SCC 481(Navinder Narain Vs. Union of India) and the principles of fixation of market value reads thus:

> "It can be broadly stated that the element of speculation is reduced to a minimum if the underlying principles of fixation of market value with reference to comparable sales are made:
>
> i. when sale is within a reasonable time of the date of notification under section 4(1);
>
> ii. it should be a bona fide transaction;

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iii. it should be of the land acquired or of the land adjacent to the land acquired; and

iv. it should possess similar advantage.

It is only when these factors are present, it can merit a consideration as a comparable case."

19. Even while the matter was argued, we impressed upon the Railways as well as the claimants that it is to nobody's advantage to prolong the matter. The claimants have been waiting for to receive their compensation for many years and the longer the matter is delayed, the interest that is payable will proportionately increase and at the same time, we have kept in mind those documents, which the learned Subordinate Judge has considered and only where we felt that there could be a marginal variation, considering the fact that Namakkal Town has become District Headquarters or where the documents that were relied on by the Judge reflect only the guide-line value, since it is subject to Section 47 A Stamp Act proceedings, we have made a deviation. We have been conscious that the compensation that is awarded should not be in the nature of bonanza for the claimants. At the same time, we have also borne in mind that these claimants are persons, who have been deprived and dispossessed of their lands for many years and have been waiting to receive compensation. One other special feature in this acquisition proceedings is that the public purpose is for laying a railway track. Though the acquired lands stretch across different survey numbers, the actual extent acquired are lands,which are narrow in width because the Railways only require the lands to lay the track. Therefore, the vast tracks of land are not required, as for instance where the public purpose is for providing housing for a disadvantaged group. Therefore, this is also relevant while considering what should be the deduction for developmental charges.

20. For convenience, the compensation fixed in the aforesaid paragraphs are tabulated hereunder:

Name of the Village & Part	Compensation Fixed (in Rs.) per sq. Feet (inclusive of 10% appreciation wherever required)	Depreciation (in %)	Extent of lands for which Depreciation is applicable (in sq.feet)	Extent of lands for which Depreciation is not applicable (in sq. Feet)
Namakkal (i)	65	15	Above 1750	Below 1750
Namakkal (ii)	55	15	Above 5565	Below 5565
Namakkal (iii)	164	15	Above 3000	Below 3000

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Name of the Village & Part	Compensation Fixed (in Rs.) per sq. Feet (inclusive of 10% appreciation wherever required)	Depreciation (in %)	Extent of lands for which Depreciation is applicable (in sq.feet)	Extent of lands for which Depreciation is not applicable (in sq. Feet)
Kosavampatti (i)	70	15	Above 1500	Below 1500
Kosavampatti (ii)	64	15	For the lands covered under LAOPs. 436& 437 of 2002	All the other parts
Kosavampatti (iii)	40	15	-	-

The solatium and interest shall be fixed in accordance with law.

21. In the result, the appeals are ordered accordingly. However, there will be no order as to costs.

Learned counsel for the appellant and the respondent in each appeal will give their working sheet calculating the solatium and interest that would be payable in accordance with law and the Registry shall receive the same so as to facilitate the drafting of the decree.

2. Though Rs.10 crores was deposited by the Railways pursuant to the interim order was made to the credit of L.A.O.P. No. 370 of 2001, it was done purely for convenience sake. The Rs.10 crores that was deposited, was to the credit of all the L.A.O.Ps and therefore the lower Court will distribute the amount in accordance with the apportionment of quantum of compensation fixed by this Court in each case and consider payment.

The above direction shall form part of the judgment dated 20.3.2007.

20.3.2007

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These appeals having been posted on 17.4.2007 for "being mentioned " subsequent to the order of this Court dated 20.3.2007 and made herein and in the presence of the aforesaid Advocates the Court made the following order:_

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(Order of the Court was made by Prabha Sridevan, J)

This matter is listed today under the caption "for being mentioned". On 20.3.2007 the appeals were ordered and a tabular column was also drawn to show the manner in which the compensation is to be calculated. There is a difference in the way in which the land owners want this tabular column to be construed and the way in which the Railways want the tabular column to be construed. According to the learned Senior Counsel for the land owners, extreme hardship would be caused, in cases where the holdings of the individual land owners are marginally more than the cut off extent fixed by us in the above order and therefore both the parties have furnished charts to show how the depreciation should be calculated and how it would affect the compensation finally. It is seen from the tabular column furnished by the claimants that where the holding is marginally more than the cut off extent, then the land owners end up getting less compensation than the persons whose holdings are within the cut off extent though they actually hold more than the cut off extent. To explain, if the cut off extent is 1750 sq.ft., a person holding 1800 sq.ft., who should, by right get more than the person holding 1750 sq.ft. would end up getting compensation for only 1530 sq.ft. Therefore he is really penalised for holding that marginal extent more than 1750 sq.ft. According to the claimants the extent below the cut off extent should be uniformly exempted from depreciation and the depreciation should be calculated only for the extent over and above that. This will also result in an anomalous situation, since if the holding is more than twice or thrice the cut off extent, then the land owners will get this 3000 or 1750 sq.ft. as the case may be free from depreciation. Therefore we have tried to balance the interest of both the parties.

2. It is clarified that wherever we say that the depreciation is applicable to the extent of lands above 1750 sq.ft. it should be understood as wherever the holding is above 1750 sq.ft. depreciation should be calculated for the entire extent. Wherever the holding is below 1750 sq.ft. compensation is to be paid without any depreciation. So also in similar way, depreciation fixed for the holding above 5565 sq.ft. (Namakkal II); above 3000 sq.ft. (Namakkal III); above 1500 sq.ft. (Kosavampatti I), should be calculated. But however we also make it clear that wherever the land owners are holding marginally above the cut off extent fixed by us, it may be 50 sq.ft. or 498 sq.ft. Suppose by applying the depreciation their holding falls below the cut off extent fixed by us, then their compensation should not be reduced below the cut off extent. To give an example Item No.8 in Namakkal Town Part I the total extent held by the claimants in L.A.O.P.No.378 of 2002 in A.S.No.830 of 2003 is 1800 sq.ft. If depreciation of 15% is applied since his holding is above 1750 sq.ft., the extent for which he is entitled to compensation is only 1530 sq.ft. In such cases, he will be paid compensation for

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1750 sq.ft., which is the cut off extent fixed by us. The compensation paid to claimants, who hold more than the cut off extent should not be less than the compensation payable for the cut off extent. Learned counsel for the Railways has no objection to the court adopting this course. Therefore this is how it should be calculated for the Villages Namakkal Part I, II,III and Kosavampatti Part - I. As regards Kosavampatti Part- II, depreciation is applied for individual L.A.O.Ps and cut off extent is not fixed. So that shall remain as it is. As regard Kosavampatti Part III, the learned Subordinate Judge had held that all the extents are vast extents and therefore he did not fix the cut off extent. Therefore the depreciation will be applied to all the holdings. We trust this makes the position clear and there will not be any more difficulty in drafting it.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

Tr/

1. The Subordinate Judge,
Namakkal.

2. The Section officer,
V.R. Section,
High Court, Madras.

5 ccs to the Government Pleader Sr. 25293 to 25297
1 cc to Mr.V.G. Suresh Kumar, Advocate, sr. 25163
1 cc to Mr.R. Karthikeyan, Advocate, sr. 25223

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A.S.NOS. 823 to 842,
861 to 880,
889 to 906,911 to 927
and 947 to 966 of 2003

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